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  - (b) for the purposes of Chapter 3, in accordance with section 614BJ(1) to (4) as it has effect as a result of section 614CE,
- “period of account” is to be read in accordance with section 614DB(1) to (3),
- “post-25 November 1996 scheme” is to be read in accordance with section 614D(1)(b),
- “pre-26 November 1996 scheme” is to be read in accordance with section 614D(1)(a),
- “related period of account” is to be read in accordance with section 614DB(5),
- “related tax year” is to be read in accordance with section 614DB(4),
- “the rental earnings”, in relation to a lease of an asset and any period, has the meaning given by section 614AC, and
- “sum” includes any money or money’s worth (and “pay” and related expressions are to be read accordingly).”

Origin: FA 1997 Sch.12 paras.23, 24(1), 24(2), 24(3), 25(1), 26, 27(1), 27(2), 27(3), 27(4), 28(5), 28(6), 29, 30(1), 30(2).

## PART 2

### NEW SECTION 37A OF TCGA 1992

6 TCGA 1992 is amended as follows.

7 After section 37 insert—

#### **“37A Consideration on disposal of certain leases**

- (1) This section applies if—
  - (a) a disposal occurs that is within section 614BP of ITA 2007 (including that section as it has effect as a result of section 614CE of that Act), and
  - (b) for the purposes of Chapter 2 or 3 of Part 11A of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.
- (2) This section also applies if—
  - (a) a disposal occurs that is within section 914 [j6971212c] of CTA 2010 (including that section as it has effect as a result of section 928 [j6971217] of that Act), and
  - (b) for the purposes of Chapter 2 or 3 of Part 21 of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.
- (3) In determining for the purposes of this Act the amount of any gain accruing to the person making the disposal, the consideration for the disposal is treated as reduced by setting against it that excess (but not so as to reduce the amount of that consideration below nil).











































































- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 835E and Chapter 2C, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if –
  - (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
  - (b) any member of the partnership is resident in the United Kingdom.
- (4) The notional trade or profession is, for the purposes of section 835E and Chapter 2C, to be treated as being a trade carried on in the United Kingdom through the partnership as such.
- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident’s share in the partnership’s profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.”

Origin: FA 1995 s.126(6), (7), (7A).

5 After section 835F insert –

*“Persons who are not UK representatives*

### **835G Agents**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an agent in the United Kingdom.
- (2) The agent is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) arising to the non-UK resident from –
  - (a) so much of the non-UK resident’s business as relates to disregarded transactions, or
  - (b) property or rights which, as a result of disregarded transactions, are used by, or held by or for, the agent on behalf of the non-UK resident.
- (3) “Disregarded transactions” are transactions –
  - (a) carried out through the agent in the United Kingdom, and
  - (b) in respect of which the agent does not act in the course of carrying on a regular agency for the non-UK resident.”

Origin: FA 1995 s.127(1), (15).

6 After section 835G insert –

### **“835H Brokers**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) The broker is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if –

- (a) the amount is transaction income in relation to a transaction carried out through the broker in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent broker conditions are met in relation to the transaction (see section 835L).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through a broker in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).”

Origin: FA 1995 s.127(1), (2), (15); drafting.

7 After section 835H insert –

**“835I Investment managers**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.
- (2) The investment manager is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if –
  - (a) the amount is transaction income in relation to an investment transaction carried out through the investment manager in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent investment manager conditions are met in relation to the investment transaction (see section 835M).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through an investment manager in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).”

Origin: FA 1995 s.127(1), (3), (15); drafting.

8 After section 835I insert –

**“835J Persons acting under alternative finance arrangements**

- (1) Subsection (2) applies if an amount within section 835E(2) arising to a non-UK resident consists of alternative finance return.
- (2) Neither of the following is the UK representative of the non-UK resident in relation to the amount –
  - (a) the other party to the alternative finance arrangements,
  - (b) any other person acting for the non-UK resident in relation to the alternative finance arrangements.
- (3) In subsection (1) “alternative finance return” means alternative finance return within the application of section 564I, 564K or 564L(2) or (3).
- (4) In subsection (2) the reference to “the alternative finance arrangements” is a reference to the alternative finance arrangements under which the alternative finance return mentioned in subsection (1) arises.”

Origin: FA 1995 s.127(1); drafting.

9 After section 835J insert –

**“835K Lloyd’s agents**

- (1) This section applies if –
  - (a) a non-UK resident (“X”) is a member of Lloyd’s, and
  - (b) an amount within section 835E(2) arises to X from X’s underwriting business.
- (2) A person who has been X’s members’ agent or the managing agent of the syndicate in question is not the UK representative of X in relation to the amount or to matters connected with the amount.
- (3) For the purposes of this section –
  - (a) X is a member of Lloyd’s if X is a member within the meaning of Chapter 3 of Part 2 of FA 1993, and
  - (b) “members’ agent” and “managing agent” are to be construed in accordance with section 184 of that Act.”

Origin: FA 1995 s.127(1), (16).

10 After section 835K insert –

*“The independent broker conditions*

**835L The independent broker conditions**

- (1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if conditions A to D are met.
- (2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.
- (5) Condition D is that the broker does not fall (apart from this subsection) to be treated under this Chapter, or under Chapter 1 of Part 7A of TCGA 1992, as a UK representative of the non-UK resident in relation to any amounts that –
  - (a) are not included in transaction income in relation to the transaction (see section 835H(2) and (3)), and
  - (b) are chargeable to tax for the same tax year as that transaction income.”

Origin: FA 1995 s.127(2).

11 After section 835L insert –

*“The independent investment manager conditions*

**835M The independent investment manager conditions**

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if conditions A to E are met.
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm’s length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 835N).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.”

Origin: FA 1995 s.127(3), (18).

12 After section 835M insert –

**“835N Investment managers: the 20% rule**

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident’s relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure –
  - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
  - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.”

Origin: FA 1995 s.127(4).

13 After section 835N insert –

**“835O Meaning of “qualifying period”, “relevant disregarded income” and “beneficial entitlement”**

- (1) This section applies for the purposes of this Chapter.
- (2) A “qualifying period” means –
  - (a) the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, or
  - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) The “relevant disregarded income” of the non-UK resident for a qualifying period is the total of the non-UK resident’s income for the tax years comprised in the qualifying period which derives from investment transactions –
  - (a) carried out by the investment manager on the non-UK resident’s behalf, and
  - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.
- (4) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).
- (5) The interests and rights referred to in subsection (4) are –
  - (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
  - (b) an interest in, or other rights in relation to, the non-UK resident.”

[Origin: FA 1995 s.127\(5\), \(6\), \(7\).](#)

14 After section 835O insert –

**“835P Treatment of transactions where 20% rule not met**

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.
- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction, but only in relation to so much of the transaction income in relation to the transaction (see section 835I(2) and (3)) as does not represent an amount –
  - (a) which is relevant disregarded income of the non-UK resident, and
  - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.”

[Origin: FA 1995 s.127\(8\).](#)

15 After section 835P insert –

**“835Q Application of 20% rule to collective investment schemes**

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme (so far as the transaction is one in respect of which amounts so arise or accrue).
- (3) In applying this section make the following assumptions –
  - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is –
    - (i) constituted for the purposes of the scheme, and
    - (ii) non-UK resident, and
  - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 835N to 835P have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are –
  - (a) for references to the non-UK resident substitute references to the assumed company, and
  - (b) for references to the non-UK resident’s relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for tax years comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions –
    - (i) carried out by the investment manager, and
    - (ii) assumed to be carried out on behalf of the company.
- (7) In this section –

“collective investment scheme” has the meaning given by section 235 of FISMA 2000, and

“participant”, in relation to a collective investment scheme, is construed in accordance with that section.”

Origin: FA 1995 s.127(9), (10), (11), (17).

16 After section 835Q insert –

*“Supplementary*

**835R Supplementary provision**

- (1) For the purposes of this Chapter a person is to be regarded as carrying out a transaction on behalf of another if the person –
  - (a) undertakes the transaction, whether on behalf of or to the account of the other, or
  - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.”

*Origin: FA 1995 s.127(14), (15).*

17 After section 835R insert –

**“835S Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) “Branch or agency” means any factorship, agency, receivership, branch or management.
- (3) “Investment manager” has the same meaning as in Chapter 1 (see section 827).
- (4) “Investment transaction” means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.
- (5) Provision made in regulations under subsection (4) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made.”

*Origin: FA 1995 s.126(8), s.127(12), (13); drafting.*

18 After section 835S insert –

**“CHAPTER 2C**

INCOME TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

**835T Introduction to Chapter**

- (1) This Chapter applies to the enactments relating to income tax so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.
- (2) Those enactments have effect in accordance with section 835U in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 2B.
- (3) In this section “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.”

Origin: FA 1995 Sch.23 para.1(1), (2); drafting.

19 After section 835T insert –

**“835U Obligations and liabilities of UK representative**

- (1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.
- (2) Subsection (3) applies if –
  - (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
  - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident’s UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability –
  - (a) of the non-UK resident (in a case within subsection (2)(a)), or
  - (b) of the UK representative (in a case within subsection (2)(b)),is discharged.
- (4) A non-UK resident is bound, as if they were the non-UK resident’s own, by acts or omissions of the non-UK resident’s UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (5) This section is subject to sections 835V and 835W.”

Origin: FA 1995 Sch.23 paras.1(1), 2.

20 After section 835U insert –

**“835V Exceptions: notices and information**

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 835U unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 835U unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 835U in a case where the representative is X’s independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.

- (5) For this purpose, the representative must act to the best of the representative's knowledge and belief after taking all reasonable steps to obtain the necessary information.
- (6) An obligation of X to provide information is not discharged by virtue of section 835U in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 835U by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 835U unless –
  - (a) the mistake is the result of an act or omission of X, or
  - (b) the mistake is one to which X consented or in which X connived.
- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs.”

Origin: FA 1995 Sch.23 paras.3, 4(1), 4(2), 4(3).

21 After section 835V insert –

**“835W Exceptions: criminal offences and penalties etc**

- (1) A person is not by virtue of section 835U liable to be proceeded against for a criminal offence unless the person –
  - (a) committed the offence, or
  - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 835U liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.
- (3) Condition A is that the act or omission is not –
  - (a) an act or omission of the independent agent, or
  - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned section 835X(3) (after being indemnified for any other liabilities under section 835X).”

Origin: FA 1995 Sch.23 para.5(1), (2).

22 After section 835W insert –

**“835X Indemnities**

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 835U.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any

liabilities which by virtue of section 835U the agent has discharged or to which the agent is subject.

- (3) The sums are those which –
- (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
  - (b) are received by the independent agent on behalf of the non-UK resident.”

Origin: FA 1995 Sch.23 para.6.

23 After section 835X insert –

**“835Y Meaning of “independent agent”**

- (1) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (2) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm’s length.”

Origin: FA 1995 Sch.23 para.7(1), (2).

PART 2

NEW PART 7A OF TCGA 1992

24 After section 271 of TCGA 1992 insert –

**“PART 7A**

UK REPRESENTATIVES OF NON-UK RESIDENTS

**CHAPTER 1**

TREATMENT OF BRANCH OR AGENCY AS UK REPRESENTATIVE OF NON-UK  
RESIDENT

*Introduction*

**271A Overview of Chapter**

- (1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to capital gains tax.
- (2) For obligations and liabilities in relation to capital gains tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2.”

Origin: Drafting.

25 After section 271A insert –

*“Branches and agencies*

**271B Branch or agency treated as UK representative**

- (1) This section applies if –
  - (a) a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom, and
  - (b) the branch or agency is to be treated under Chapter 2B of Part 14 of ITA 2007 as the UK representative of the non-UK resident in relation to amounts within section 835E(2) of that Act.
- (2) The branch or agency is the UK representative of the non-UK resident in relation to amounts which, by reference to the branch or agency, are chargeable to capital gains tax under section 10 above.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2 in relation to an amount within that subsection.

*Rule 1*

The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

*Rule 2*

The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

*Rule 3*

If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.

- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 271C.”

**Origin:** FA 1995 s.126(2), (3), (4), (5); drafting.

26 After section 271B insert –

**“271C Trade or profession carried on in partnership**

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.
- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 271B and Chapter 2, to be treated as including the notional trade or profession.

- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if –
  - (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
  - (b) any member of the partnership is resident in the United Kingdom.
- (4) The notional trade or profession is, for the purposes of section 271B and Chapter 2, to be treated as being a trade carried on in the United Kingdom through the partnership as such.
- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident’s share in the partnership’s profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.”

Origin: FA 1995 s.126 (6), (7), (7A).

27 After section 271C insert –

#### “271D Interpretation of Chapter

In this Chapter –

“branch or agency” means any factorship, agency, receivership, branch or management, and

“non-UK resident” means a person who is not resident in the United Kingdom.”

Origin: FA 1995 s.126(1), (8).

28 After section 271D insert –

## “CHAPTER 2

### CAPITAL GAINS TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

#### 271E Introduction to Chapter

- (1) This Chapter applies to the enactments contained in –
  - (a) this Act,
  - (b) the Tax Acts, and
  - (c) subordinate legislation made under this Act or the Tax Acts, so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.
- (2) Those enactments have effect in accordance with section 271F in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 1.
- (3) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

Origin: FA 1995 Sch.23 para.1(1), (2).

29 After section 271E insert –

**“271F Obligations and liabilities of UK representative**

- (1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.
- (2) Subsection (3) applies if –
  - (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
  - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident’s UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability –
  - (a) of the non-UK resident (in a case within subsection (2)(a)), or
  - (b) of the UK representative (in a case within subsection (2)(b)),is discharged.
- (4) A non-UK resident is bound, as if they were the non-UK resident’s own, by acts or omissions of the non-UK resident’s UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (5) This section is subject to sections 271G and 271H.”

Origin: FA 1995 Sch.23 paras.1(1), 2.

30 After section 271F insert –

**“271G Exceptions: notices and information**

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 271F unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 271F unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 271F in a case where the representative is X’s independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.
- (5) For this purpose, the representative must act to the best of the representative’s knowledge and belief after taking all reasonable steps to obtain the necessary information.

- (6) An obligation of X to provide information is not discharged by virtue of section 271F in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 271F by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 271F unless—
  - (a) the mistake is the result of an act or omission of X, or
  - (b) the mistake is one to which X consented or in which X connived.
- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioner’s for Her Majesty’s Revenue and Customs or to any officer of Revenue and Customs.”

Origin: FA 1995 Sch.23 paras.3, 4(1), 4(2), 4(3).

31 After section 271G insert—

**“271H Exceptions: criminal offences and penalties etc**

- (1) A person is not by virtue of section 271F liable to be proceeded against for a criminal offence unless the person—
  - (a) committed the offence, or
  - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 271F liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.
- (3) Condition A is that the act or omission is not—
  - (a) an act or omission of the independent agent, or
  - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 271I(3) (after being indemnified for any other liabilities under section 271I).”

Origin: FA 1995 Sch.23 para.5(1), (2).

32 After section 271H insert—

**“271I Indemnities**

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 271F.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 271F the agent has discharged or to which the agent is subject.
- (3) The sums are those which—

- (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
- (b) are received by the independent agent on behalf of the non-UK resident.”

Origin: FA 1995 Sch.23 para.6.

33 After section 271I insert –

**“271J Meaning of “non-UK resident” and “independent agent”**

- (1) In this Chapter “non-UK resident” means a person who is not resident in the United Kingdom.
- (2) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (3) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm’s length.”

Origin: FA 1995 s.126(1), Sch.23 para.7(1), (2).

SCHEDULE 7

Section 370

MISCELLANEOUS RELOCATIONS [j3700]

PART 1

RELOCATION OF SECTION 38 OF, AND SCHEDULE 15 TO, FA 1973

*Taxes Management Act 1970 (c. 9)*

- 1 TMA 1970 is amended as follows.
- 2 After Part 7 insert –

**“PART 7A**

HOLDERS OF LICENCES UNDER THE PETROLEUM ACT 1998

*Licence-holders’ liabilities for tax assessed on non-UK residents*

**77B Pre-conditions for serving secondary-liability notice**

- (1) Conditions A to E are the pre-conditions for the purposes of section 77C.
- (2) Condition A is that tax is assessed on a non-UK resident.
- (3) Condition B is that the tax is assessed in reliance on –
  - (a) section 276 of the 1992 Act,

- (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (4) Condition C is that the tax assessed is not tax under ITEPA 2003.
- (5) Condition D is that—
- (a) there is a licence to which the tax assessed is related (see section 77J for the meaning of tax related to a licence),
  - (b) there is more than one licence to which the tax assessed is related, or
  - (c) there is a licence, or more than one licence, to which part of the tax assessed is related but in addition part of the tax assessed is not related to any licence.
- (6) Condition E is that the tax is not paid in full within 30 days after it becomes due and payable.
- (7) In this Part “licence” means a licence under Part 1 of the Petroleum Act 1998.

#### **77C Secondary-liability notices**

- (1) If each of the pre-conditions (see section 77B) is met, an officer of Revenue and Customs may serve on the holder of the licence concerned, or on the holder of any of the licences concerned, a notice—
- (a) that states particulars of the assessment,
  - (b) that states the amount remaining unpaid and the date when it became payable,
  - (c) that requires the holder to pay, within 30 days of the service of the notice, the amount for which the holder is liable, and
  - (d) that, if the amount for which the holder is liable is given by subsection (3) or section 77G(7), gives particulars of how the amount was determined.
- (2) For the purposes of subsection (1), the amount for which the holder is liable is the amount remaining unpaid, together with any interest on it under sections 86 and 87A, but this is subject to subsection (3) and section 77G(7).
- (3) In a case within section 77B(5)(b) or (c), the amount for which the holder of the licence is liable is given by—
- $$\frac{L}{T} \times (A + I)$$
- (4) In subsection (3)—
- A is the amount remaining unpaid,
  - I is any interest due on that amount under sections 86 and 87A,
  - T is the total amount of the profits or chargeable gains in respect of which the assessment is made, and
  - L is so much of that total amount as is profits or chargeable gains related to the licence.
- (5) The power under subsection (1) is subject to section 77E (certain pre-1974 cases).

- (6) In this Part “secondary-liability notice” means a notice under subsection (1).

**77D Payments under secondary-liability notices**

- (1) Any amount which a person is required to pay by a secondary-liability notice may be recovered from the person as if it were tax due and duly demanded from the person.
- (2) If a person (“H”) pays any amount which a secondary-liability notice requires H to pay, H may recover the amount from the person on whom the assessment concerned was made.
- (3) A payment in pursuance of a secondary-liability notice is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.

**77E Exception for certain pre-1974 cases**

- (1) Section 77C(1) does not give power to serve a secondary-liability notice on the holder of a licence if the profits arose, or the chargeable gains accrued, to the assessed person in consequence of a contract made by the holder before 23 March 1973.
- (2) The exception under subsection (1) does not apply if—
  - (a) the assessed person is connected with the holder, or
  - (b) the contract was substantially varied on or after 23 March 1973.
- (3) For the purposes of subsection (2), whether a person is connected with another is determined in accordance with section 1121 [j4988] of CTA 2010.”

Origin: FA 1973 Sch.15 paras.4(1), 4(2), 4(3), 4A(1), 4A(2), 5, 6, 7A(3), 8A(1), 8A(3), 8A(4); F(No.2)A 1987 s.86(3); Annex 1, change 2 [jc7601]; drafting.

3 After section 77E insert—

*"Exemption certificates*

**77F Issue, cancellation and effect of exemption certificates**

- (1) This section applies if there is a person (“T”) who will or might become liable to tax which, if unpaid, could be recovered under this Part from a person (“H”) who is the holder of a licence.
- (2) If an officer of Revenue and Customs, on an application made by T, is satisfied that T will comply with any obligations imposed on T by the Taxes Acts, the officer may issue to H a certificate exempting H from section 77C with respect to any tax payable by T.
- (3) If a certificate is issued to H under subsection (2), an officer of Revenue and Customs may, by notice in writing to H, cancel the certificate from the date specified in the notice.
- (4) The date specified in a notice under subsection (3) may not be earlier than 30 days after the service of the notice.

- (5) If a certificate is issued to H under subsection (2), section 77C does not apply to any tax payable by T which becomes due while the certificate is in force.
- (6) If a certificate is issued to H under subsection (2) but is subsequently cancelled under subsection (3), section 77C also does not apply to any tax payable by T which –
  - (a) becomes due after the certificate is cancelled, but
  - (b) is in respect of profits arising, or chargeable gains accruing, while the certificate is in force.

#### **77G Liabilities for assessments made after exemption certificate cancelled**

- (1) Subsection (7) applies if –
  - (a) each of conditions A to C is met, and
  - (b) one of conditions D and E is met.
- (2) Condition A is that, after the cancellation under section 77F(3) of a certificate issued under section 77F(2) to a person (“H”) who is the holder of a licence, tax related to the licence is assessed on the applicant for the certificate.
- (3) Condition B is that the tax is assessed in reliance on –
  - (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (4) Condition C is that the tax assessed is not tax under ITEPA 2003.
- (5) Condition D is that –
  - (a) ignoring section 77F, H could be required by a secondary-liability notice to pay all of the tax remaining unpaid under the assessment, and
  - (b) the profits or chargeable gains in respect of which the assessment is made include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.
- (6) Condition E is that –
  - (a) as a result of section 77C(3), but ignoring section 77F, H could be required by a secondary-liability notice to pay some, but not all, of the tax remaining unpaid under the assessment, and
  - (b) the profits or chargeable gains that are –
    - (i) ones in respect of which the assessment is made, and
    - (ii) related to the licence,include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.
- (7) If this subsection applies then, for the purposes of section 77C(1), the amount for which the holder of the licence is liable is the amount given by –

$$A \times \left( 1 - \frac{\text{CIF}}{\text{CIF} + \text{NIF}} \right)$$

together with a corresponding proportion of any interest due under sections 86 and 87A on the amount remaining unpaid.

(8) In subsection (7) –

A is the amount that H could be required to pay as mentioned in paragraph (a) of whichever of conditions D and E is met (“the operative condition”),

CIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is in force, and

NIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is not in force.”

Origin: FA 1973 Sch.15 paras.4(1), 7, 7A(1), 7A(2), 7A(3), 7A(4), 8, 8A(1), 8A(4); F(No.2)A 1987 s.86(3).

4 After section 77G insert –

*"Supplementary*

**77H Calculations under sections 77C(3) and 77G(7)**

- (1) Subsection (2) applies for the purposes of calculating any of the following amounts of profits or chargeable gains –
  - (a) L in a calculation under section 77C(3),
  - (b) CIF in a calculation under section 77G(7), and
  - (c) CIF + NIF in a calculation under section 77G(7) when it is condition E in section 77G that is met.
- (2) The amount is to be calculated as if for the purposes of making a separate assessment in respect of those profits or chargeable gains on the person on whom the assessment was made.
- (3) An officer of Revenue and Customs applying subsection (2) is to make all such allocations and apportionments of receipts, expenses, allowances and deductions taken into account, or made, for the purposes of the actual assessment as appear to the officer to be just and reasonable in the circumstances.

**77I Information**

- (1) The holder of a licence must, if required to do so by a notice served on the holder by an officer of Revenue and Customs, give to the officer within the time specified by the notice (which is not to be less than 30 days) such particulars as may be required by the notice of –
  - (a) licence-related transactions (see subsection (2)),
  - (b) licence-related payments (see subsection (3)), or
  - (c) persons to whom licence-related payments have been paid or are payable.
- (2) In subsection (1) “licence-related transaction” means a transaction in connection with activities authorised by the licence as a result of which any person is or might be liable to tax by virtue of –
  - (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or

- (c) section 1313 of CTA 2009.
- (3) In subsection (1) “licence-related payment” means –
  - (a) earnings which constitute employment income (see section 7(2)(a) of ITEPA 2003),
  - (b) amounts which are treated as earnings and constitute employment income (see section 7(2)(b) of ITEPA 2003), or
  - (c) other payments,  
paid or payable in respect of duties or services performed in an area in which activities authorised by the licence may be carried on under the licence.
- (4) If a notice under subsection (1) is served on the holder of a licence, the holder must take reasonable steps to obtain the information necessary to enable the holder to comply with the notice.

**77J Meaning of “related to a licence” as respects tax, or profits or gains**

- (1) Subsections (2) and (3) apply for the purposes of this Part.
- (2) An amount of tax is related to a licence if the tax is in respect of profits or chargeable gains related to the licence.
- (3) Profits or chargeable gains are related to a licence if they are –
  - (a) profits from activities authorised by the licence,
  - (b) profits from activities carried on in connection with activities authorised by the licence, or
  - (c) profits from, or chargeable gains accruing on the disposal of, exploration or exploitation rights connected with –
    - (i) activities authorised by the licence, or
    - (ii) activities carried on in connection with activities authorised by the licence.
- (4) In this section –
  - (a) “designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,
  - (b) “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area,
  - (c) “exploration or exploitation rights” means rights to –
    - (i) assets to be produced by exploration or exploitation activities,
    - (ii) interests in such assets, or
    - (iii) the benefit of such assets,
  - (d) any reference to the disposal of exploration or exploitation rights includes a reference to the disposal of unlisted shares deriving their value, or the greater part of their value, directly or indirectly from such rights,
  - (e) “shares” includes –
    - (i) stock, and
    - (ii) securities not creating or evidencing a charge on assets,

- (f) “unlisted shares” means shares that are not listed on a recognised stock exchange, and
- (g) “recognised stock exchange” has the meaning given by section 1005(1) and (2) of ITA 2007.

**77K Other definitions in Part 7A**

- (1) This section applies for the purposes of this Part.
- (2) “Licence” has the meaning given by section 77B(7).
- (3) “Secondary-liability notice” has the meaning given by section 77C(6).”

*Origin: FA 1973 s.38(2), Sch.15 paras.2, 4(1), 8A(2); Annex 1, change 2 [jc7601]; drafting.*

- 5 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.
- (2) Omit the entry for paragraph 2 of Schedule 15 to FA 1973.
- (3) After the entry for regulations under section 59E of TMA 1970 insert –  
“Section 77I(1) of this Act.”

*Finance Act 1973 (c. 51)*

- 6 FA 1973 is amended as follows.
- 7 Omit section 38 (which introduces and interprets Schedule 15).
- 8 Omit Schedule 15 (territorial extension of charge to tax: supplementary provisions).

PART 2

RELOCATION OF SECTION 24 OF FA 1974

*Taxes Management Act 1970 (c. 9)*

- 9 TMA 1970 is amended as follows.
- 10 In section 8 (personal return) after subsection (4) insert –  
“(4A) Subsection (4B) applies if a notice under this section is given to a person within section 8ZA of this Act (certain persons employed etc by person not resident in United Kingdom who perform their duties for UK clients).  
(4B) The notice may require a return of the person’s income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.”

*Origin: FA 1974 s.24.*

11 After section 8 insert –

**“8ZA Interpretation of section 8(4A)**

- (1) For the purposes of section 8(4A) of this Act, a person (“F”) is within this section if each of conditions A to C is met.
- (2) Condition A is that F performs in the United Kingdom, for a continuous period of 30 days or more, duties of an office or employment.
- (3) Condition B is that the office or employment is under or with a person who –
  - (a) is not resident in the United Kingdom, but
  - (b) is resident outside the United Kingdom.
- (4) Condition C is that the duties are performed for the benefit of a person who –
  - (a) is resident in the United Kingdom, or
  - (b) carries on a trade, profession or vocation in the United Kingdom.”

Origin: FA 1974 s.24.

12 After section 15 insert –

**“15A Non-resident’s staff are UK client’s employees for section 15 purposes**

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that a person (“F”) performs in the United Kingdom, for a continuous period of 30 days or more, duties of an office or employment.
- (3) Condition B is that the office or employment is under or with a person who –
  - (a) is not resident in the United Kingdom, but
  - (b) is resident outside the United Kingdom.
- (4) Condition C is that the duties are performed for the benefit of a person (“P”) who –
  - (a) is resident in the United Kingdom, or
  - (b) carries on a trade, profession or vocation in the United Kingdom.
- (5) Section 15 of this Act applies as if P were F’s employer, but only so as to enable P to be required to make a return of F’s name and place of residence.”

Origin: FA 1974 s.24; drafting.

*Finance Act 1974 (c. 30)*

13 FA 1974 is amended as follows.

14 Omit section 24 (returns of persons treated as employees).

PART 3

RELOCATION OF SECTION 42 OF ICTA

*Taxes Management Act 1970 (c. 9)*

- 15 TMA 1970 is amended as follows.
- 16 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.
- (2) Omit the entry for section 42 of ICTA.
- (3) After the entry for section 128 of ITTOIA 2005 insert –  
“Section 302B of ITTOIA 2005.”

*Income and Corporation Taxes Act 1988 (c. 1)*

- 17 ICTA is amended as follows.
- 18 Omit section 42 (appeals against determinations under Chapter 4 of Part 3 of ITTOIA 2005).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 19 ITTOIA 2005 is amended as follows.
- 20 After section 302 insert –

*“Determinations affecting liability of more than one person*

**302A Appeals against proposed determinations**

- (1) Subsection (2) applies if it appears to an officer of Revenue and Customs that –
- (a) a determination is needed of an amount that is to be brought into account as a receipt under this Chapter in calculating the liability to tax of a person (“the first taxpayer”), and
- (b) the determination may affect the liability to income tax, corporation tax or capital gains tax of other persons.
- (2) The officer may give notice (a “provisional notice of determination”) to the first taxpayer and the other persons of –
- (a) the determination the officer proposes to make, and
- (b) their rights under this section and section 302C.
- (3) A person to whom a provisional notice of determination is given may object to the proposed determination by giving notice (a “notice of objection”) to the officer.
- (4) The notice of objection must be given within 30 days of the date on which the provisional notice of determination was given.
- (5) If an officer gives provisional notices of determination and no person gives a notice of objection –
- (a) a determination must be made by the officer as proposed in the provisional notices, and

- (b) the determination is not to be called in question in any proceedings.

**302B Section 302A: supplementary**

- (1) A provisional notice of determination under section 302A(2) may include a statement of the grounds on which the officer proposes to make the determination.
- (2) Subsection (1) applies despite any obligation as to secrecy or other restriction on the disclosure of information.
- (3) An officer of Revenue and Customs may by notice (“a preliminary notice”) require any person to give any information that appears to the officer to be needed for deciding whether to give any person a provisional notice of determination under section 302A(2).
- (4) The preliminary notice must state the time within which the information is to be given.

**302C Determination by tribunal**

- (1) If a notice of objection is given under section 302A(3), the amount mentioned in section 302A(1) must be determined in the same way as an appeal.
- (2) All persons to whom provisional notices of determination have been given under section 302A(2) may be a party to—
  - (a) any proceedings under subsection (1), and
  - (b) any appeal arising out of those proceedings.
- (3) Those persons are bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings.
- (4) Their successors in title are bound in the same way.”

Origin: ICTA s.42(1), (2), (3), (4), (5), (6), (7).

*Corporation Tax Act 2009 (c. 4)*

- 21 CTA 2009 is amended as follows.
- 22 In section 242(2) (determination by tribunal) for the words from “take part” to the end substitute “be a party to—
  - (a) any proceedings under subsection (1), and
  - (b) any appeal arising out of those proceedings.”

PART 4

RELOCATION OF SECTION 84A OF ICTA

*Income and Corporation Taxes Act 1988 (c. 1)*

- 23 ICTA is amended as follows.
- 24 Omit section 84A (costs of establishing share option or profit sharing scheme: relief).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 25 ITTOIA 2005 is amended as follows.  
 26 In Chapter 5 of Part 2, after section 94 insert –

*"SAYE option schemes, CSOP schemes*

**94A Costs of setting up SAYE option scheme or CSOP scheme**

- (1) This section applies if –
- (a) a company incurs expenses in setting up a scheme within subsection (2) that is approved by an officer of Revenue and Customs, and
  - (b) no employee or director acquires rights under the scheme before it is approved.
- (2) The schemes within this subsection are –
- (a) SAYE option schemes within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), and
  - (b) CSOP schemes within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).
- The references in subsection (1) to a scheme being approved are to it being approved under Schedule 3 or 4 to ITEPA 2003 (as the case may be).
- (3) A deduction for the expenses is to be made in calculating the profits of a trade carried on by the company.
- (4) If the approval is given more than 9 months after the end of the period of account in which the expenses are incurred, for the purposes of subsection (3) the deduction is to be made for the period of account in which the approval is given.”

*Origin: ICTA s.84A(1), (2), (3), (3ZA), (3A), (4).*

- 27 In section 272(2) (profits of property business: application of trading income rules) at the appropriate place insert –

“section 94A | costs of setting up SAYE option  
 scheme or CSOP scheme”.

PART 5

RELOCATION OF SECTION 152 OF ICTA

*Taxes Management Act 1970 (c. 9)*

- 28 TMA 1970 is amended as follows.  
 29 (1) Amend section 48 (application of following provisions of Part 5) as follows.  
 (2) In subsection (2)(a) (application to appeals other than appeals against assessments) for “section 56” substitute “sections 54A to 54C and 56”.

- (3) In subsection (3) (meaning of “relevant provisions” for purpose of application to proceedings other than appeals) after “except sections 49A to 49I” insert “and 54A to 54C”.

30 After section 54 insert –

**“54A No questioning in appeal of amounts of certain social security income**

- (1) Subsection (2) applies if an amount is notified under section 54B(1) and –
- (a) no objection is made to the notification within 60 days after its date of issue, or such further period as may be allowed under section 54B(4) and (5), or
  - (b) an objection is made but is withdrawn by the objector by notice.
- (2) The amount is not to be questioned in any appeal against any assessment in respect of income including the amount.
- (3) Subsection (4) applies if an amount is notified under section 54B(1) and –
- (a) an objection is made to the notification within 60 days after its date of issue, or such further period as may be allowed under section 54B(4) and (5),
  - (b) the appropriate officer and the objector come to an agreement that the amount notified should be varied in a particular manner, and
  - (c) the officer confirms that agreement in writing.
- (4) The amount, as varied, is not to be questioned in any appeal against any assessment in respect of income including that amount.
- (5) Subsection (4) does not apply if, within 60 days from the date when the agreement was come to, the objector gives to the appropriate officer notice that the objector wishes to repudiate or resile from the agreement.

**54B Notifications of taxable amounts of certain social security income**

- (1) The appropriate officer may by notice notify a person who is liable to pay any income tax charged on any unemployment benefit, jobseeker’s allowance or income support –
- (a) of the amount on which the tax is charged, or
  - (b) of an alteration in an amount previously notified under paragraph (a) or this paragraph.
- (2) A notification under subsection (1) must –
- (a) state its date of issue, and
  - (b) state that the person notified may object to the notification by notice given within 60 days after that date.
- (3) A notification under subsection (1)(b) cancels the previous notification concerned.
- (4) An objection to a notification under subsection (1) may be made later than 60 days after its date of issue if, on an application for the purpose –

- (a) the appropriate officer is satisfied –
    - (i) that there was a reasonable excuse for not objecting before the end of the 60 days, and
    - (ii) that the application was made without unreasonable delay after the end of the 60 days, and
  - (b) the officer gives consent in writing.
- (5) If the officer is not so satisfied, the officer is to refer the application for determination by the tribunal.

**54C Interpretation of sections 54A and 54B: “appropriate officer” etc**

- (1) In sections 54A and 54B “the appropriate officer” means the appropriate officer –
- (a) in Great Britain, of the Department of Work and Pensions, and
  - (b) in Northern Ireland, of the Department for Social Development.
- (2) Section 48(1)(a) (meaning of “appeal” in the following provisions of Part 5) does not apply for the purposes of sections 54A and 54B.”

*Origin: ICTA s.152(1), (2), (3), (4), (5), (6), (7); Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (SR(NI) 1999/481) art.8, art.10(1), Sch.6; Annex 1, change 14 [jc714]; drafting.*

*Income and Corporation Taxes Act 1988 (c. 1)*

- 31 ICTA is amended as follows.
- 32 Omit section 152 (notification of taxable amount of certain benefits).

PART 6

RELOCATION OF SECTION 337A(2) OF ICTA

*Income and Corporation Taxes Act 1988*

- 33 ICTA is amended as follows.
- 34 Omit section 337A(2) (in calculating a company’s income, deductions in respect of interest to be made only under Part 5 of CTA 2009).

*Corporation Tax Act 2009 (c. 4)*

- 35 CTA 2009 is amended as follows.
- 36 After section 1301 insert –

**“1301A Restriction of deductions for interest**

In calculating a company’s income from any source for corporation tax purposes, no deduction is allowed for interest otherwise than under Part 5 (loan relationships).”

*Origin: ICTA s.337A(2).*

PART 7

RELOCATION OF SECTION 475 OF ICTA

*Income and Corporation Taxes Act 1988 (c. 1)*

- 37 ICTA is amended as follows.
- 38 Omit section 475 (tax-free Treasury securities: exclusion of interest on borrowed money).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 39 ITTOIA 2005 is amended as follows.
- 40 Before section 155 (before the italic cross-heading) insert –
- “154A Non-UK resident bankers, insurers and security dealers with interest on 3½% War Loan 1952 Or After**
- (1) This section applies if –
- (a) in any tax year a person who is not ordinarily resident in the United Kingdom carries on a trade there –
    - (i) consisting of banking or insurance, or
    - (ii) consisting wholly or partly of dealing in securities, and
  - (b) in calculating the profits of the trade for the tax year any amount is disregarded as a result of section 714 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½% War Loan 1952 Or After was issued.
- (2) Interest on money borrowed for the purposes of the trade is to be deducted in calculating the profits of the trade of that tax year only so far as it exceeds the ineligible amount.
- (3) The ineligible amount is found as follows –
- Step 1*
- Add together all sums borrowed for the purposes of the trade and still owing in the basis period for the tax year.
- Step 2*
- If the person carrying on the trade is a company, deduct any sums carrying interest which is not deducted in calculating the profits of the trade (otherwise than because of subsection (2)).
- Step 3*
- If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the trade in the basis period, deduct the excess from that amount.
- Step 4*
- Calculate the average rate of interest in the basis period on money borrowed for the purposes of the trade.

*Step 5*

Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the basis period.

The result is the ineligible amount.

- (4) If the person's holding of 3½% War Loan 1952 Or After has fluctuated during the basis period, the total cost for the purposes of Step 3 is taken to be –

$$C \times \frac{AH}{TH}$$

where –

C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the basis period,

AH is the average holding in that period, and

TH is the total of the initial holding (if any) and any holdings acquired during the basis period.

- (5) In subsection (4) “initial holding” means the holding held by the person at the beginning of the basis period.”

*Origin: ICTA s.475(1), (2), (3), (4), (5), (8), (9); drafting.*

PART 8

RELOCATION OF SECTION 700 OF ICTA

*Income and Corporation Taxes Act 1988 (c. 1)*

41 ICTA is amended as follows.

42 Omit section 700 (adjustments and information).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

43 ITTOIA 2005 is amended as follows.

44 After section 682 (assessments, adjustments and claims after the administration period) insert –

**“682A Statements relating to estate income**

- (1) If a person within subsection (2) requests it in writing, a personal representative of a deceased person must provide the person with a statement showing –

- (a) the amount treated as estate income arising from the person's interest in the whole or part of the deceased person's estate for which the person is liable to income tax for a tax year, and
- (b) the amount of any tax at the applicable rate which any such amount is treated as having borne.

- (2) A person is within this subsection if –

- (a) the person has or has had an absolute or limited interest in the whole or part of the residue of the estate, or

- (b) estate income has arisen to the person from a discretionary interest the person has or has had in the whole or part of the residue of the estate.
- (3) A statement under subsection (1) must be in writing.
- (4) The duty to comply with a request under this section is enforceable by the person who made it.”

Origin: ICTA s.700(5), (6).

## PART 9

### RELOCATION OF SECTION 787 OF ICTA

#### *Income and Corporation Taxes Act 1988 (c. 1)*

45 ICTA is amended as follows.

46 Omit section 787 (restriction of relief for payments of interest).

#### *Income Tax Act 2007 (c. 3)*

47 ITA 2007 is amended as follows.

48 In section 2(13) (overview of Part 13) after paragraph (h) (which is inserted by Schedule 8) insert –

- “(i) leases of plant and machinery (Chapter 6), and
- (j) tax relief for interest (Chapter 7).”

49 After section 809ZF (which is inserted by CTA 2010) insert –

### “CHAPTER 7

#### AVOIDANCE INVOLVING OBTAINING TAX RELIEF FOR INTEREST

#### **809ZG Tax relief schemes and arrangements**

- (1) Relief is not to be given under any provision of the Income Tax Acts to a person in respect of a payment of interest if a tax relief scheme has been effected, or tax relief arrangements have been made, in relation to the transaction under which the interest is paid.
- (2) Subsection (1) applies whether the tax relief scheme is effected, or the tax relief arrangements are made, before or after the transaction.
- (3) A scheme is a tax relief scheme in relation to a transaction for the purposes of subsection (1) if it is such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.
- (4) Arrangements are tax relief arrangements in relation to a transaction for the purposes of subsection (1) if they are such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.

- (5) In this section “relief” means relief by way of—
- (a) deduction in calculating profits or gains, or
  - (b) deduction or set off against income.”

Origin: ICTA s.787(1), (2).

## PART 10

### RELOCATION OF SECTIONS 130 TO 132 OF FA 1988

*Taxes Management Act 1970 (c. 9)*

50 TMA 1970 is amended as follows.

51 After section 109 insert—

*"Companies ceasing to be UK resident*

#### **109A Provisions for securing payment by company of outstanding tax**

- (1) Each of conditions A to D must be met before a company ceases to be resident in the United Kingdom.
- (2) Condition A is that the company gives to the Commissioners for Her Majesty’s Revenue and Customs notice of its intention to cease to be resident in the United Kingdom.
- (3) Condition B is that the notice specifies the time (“the migration time”) when the company intends to cease to be resident in the United Kingdom.
- (4) Condition C is that the company gives to the Commissioners—
  - (a) a statement of the amount which, in its opinion, is the amount of the tax which is or will be payable by it in respect of periods beginning before the migration time, and
  - (b) particulars of the arrangements which it proposes to make for securing the payment of that tax.
- (5) Condition D is that—
  - (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the migration time, and
  - (b) those arrangements, as made by the company, are approved for the purposes of this subsection by the Commissioners.
- (6) If any question arises as to the amount which, for the purposes of subsection (5), should be regarded as the amount of tax which is or will be payable by the company in respect of periods beginning before the migration time, that question is to be referred to the tribunal.
- (7) A decision of the tribunal under subsection (6) is final, despite sections 11 and 13 of the TCEA 2007 (appeals from tribunal decisions).
- (8) If any information furnished by the company for the purpose of securing the Commissioners’ approval under subsection (5) does not

fully and accurately disclose all facts and considerations material for the Commissioners' decision under that subsection, any resulting approval is void.

#### **109B Penalty for company's failure to comply with section 109A**

If a company ceases to be resident in the United Kingdom at a time before each of conditions A to D in section 109A is met, the company is liable to a penalty not exceeding the amount of tax –

- (a) which is or will be payable by it in respect of periods beginning before that time, and
- (b) which has not been paid at that time.

#### **109C Penalty for other persons if company fails to comply with section 109A**

- (1) Subsection (5) applies if –
  - (a) condition E is met, and
  - (b) either of conditions F and G is met.
- (2) Condition E is that in relation to a company (“the migrating company”) any person (“P”) does or is party to the doing of any act which to P’s knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109A is met.
- (3) Condition F is that P is –
  - (a) a director of the migrating company,
  - (b) a company which has control of the migrating company, or
  - (c) a director of a company which has control of the migrating company.
- (4) Condition G is that the act mentioned in subsection (2) is a direction or instruction given –
  - (a) to persons within subsection (3), but
  - (b) otherwise than by way of advice given by a person acting in a professional capacity.
- (5) If this subsection applies, P is liable to a penalty not exceeding the amount of tax –
  - (a) which is or will be payable by the migrating company in respect of periods beginning before the time mentioned in subsection (2), and
  - (b) which has not been paid at that time.
- (6) Subsections (7) and (8) apply for the purposes of any proceedings against a person within subsection (3) for the recovery of a penalty under subsection (5).
- (7) It is to be presumed that the person was party to every act of the migrating company unless the person proves that it was done without the person’s consent or connivance.
- (8) It is to be presumed, unless the contrary is proved, that any early-migration act was to the person’s knowledge an early-migration act.

- (9) In subsection (8) “early-migration act” means an act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109A is met.

#### **109D Liability of other persons for unpaid tax**

- (1) This section applies if a company (“the migrating company”)—
- (a) ceases to be resident in the United Kingdom at any time, and
  - (b) any tax which is payable by the company in respect of periods beginning before that time is not paid within 6 months from the time when it becomes payable.
- (2) The Commissioners for Her Majesty’s Revenue and Customs may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person within subsection (3) a notice—
- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable, and
  - (b) requiring that person to pay that amount within 30 days of the service of the notice.
- (3) The persons within this subsection are—
- (a) any company which is, or within the pre-migration year was, a member of the same group as the migrating company,
  - (b) any person who is, or within the pre-migration year was, a controlling director of the migrating company, and
  - (c) any person who is, or within the pre-migration year was, a controlling director of a company which has, or within the pre-migration year had, control over the migrating company.
- (4) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due and duly demanded from the person.
- (5) If a person (“P”) pays any amount which a notice under this section requires P to pay, P may recover the amount from the migrating company.
- (6) A payment in pursuance of a notice under this section is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.
- (7) In this section—
- “controlling director”, in relation to a company, means a director of the company who has control of the company,
- “group” has the meaning which would be given by section 170 of the 1992 Act if in that section for references to 75 per cent subsidiaries there were substituted references to 51 per cent subsidiaries, and
- “pre-migration year” means the period of 12 months ending with the time when the migrating company ceases to be resident in the United Kingdom.

### 109E Interpretation of sections 109A to 109D

- (1) In sections 109A to 109D, any reference to the tax payable by a company includes a reference to –
  - (a) any amount which the company is liable to pay under section 77C (territorial extension of charge to tax),
  - (b) any amount of tax which the company is liable to pay under regulations made under section 684 of ITEPA 2003 (PAYE),
  - (c) any amount which the company is liable to pay under section 61 of the Finance Act 2004 (sub-contractors in the construction industry),
  - (d) any income tax which the company is liable to pay in respect of payments within section 946 of ITA 2007 (collection of tax: deposit-takers, building societies and certain companies), and
  - (e) any amount representing income tax which the company is liable to pay under section 966 of ITA 2007 (entertainers and sportsmen).
- (2) In sections 109A to 109D read in accordance with subsection (1), any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest –
  - (a) on the tax so payable, or
  - (b) on tax paid by the company in respect of such periods, which the company is liable to pay in respect of periods beginning before or after that time.
- (3) In sections 109A to 109D “director”, in relation to a company, is to be read in accordance with the following provisions –
  - (a) section 67(1) and (2) of ITEPA 2003, and
  - (b) section 451 [j7417b] of CTA 2010.
- (4) In sections 109A to 109D, any reference to a person having control of a company is to be read in accordance with sections 449 [j7416] and 450 [j7416b] of CTA 2010.”

Origin: FA 1988 s.130(1), (2), (3), (4), (5), (7), (8), s.131(1), (2), (3), (4), (5), (6), s.132(1), (2), (3), (4), (5), (6).

*Finance Act 1988 (c. 39)*

- 52 FA 1988 is amended as follows.
- 53 Omit sections 130 to 132 (company migration).

#### PART 11

#### RELOCATION OF SECTION 151 OF FA 1989

*Taxes Management Act 1970 (c. 9)*

- 54 TMA 1970 is amended as follows.

55 After section 30A insert –

**“30AA Assessing income tax on trustees and personal representatives**

- (1) Income tax charged on income arising to trustees of a settlement may be assessed and charged on, and in the name of, any one or more of the assessable trustees.
- (2) Income tax charged on income arising to the personal representatives of a deceased person may be assessed and charged on, and in the name of, any one or more of the assessable representatives.
- (3) In subsection (1) “the assessable trustees” means –
  - (a) the trustees of the settlement in the tax year in which the income arises, and
  - (b) any subsequent trustees of the settlement.
- (4) In subsection (2) “the assessable representatives” means –
  - (a) the persons who, in the tax year in which the income arises, are personal representatives of the deceased person, and
  - (b) any subsequent personal representatives of the deceased person.”

[Origin: FA 1989 s.151\(1\), \(2\).](#)

*Finance Act 1989 (c. 26)*

56 FA 1989 is amended as follows.

57 Omit section 151 (assessment of trustees and personal representatives).

PART 12

RELOCATION OF SCHEDULE 12 TO F(No.2)A 1992 SO FAR AS APPLYING FOR INCOME TAX PURPOSES

*Finance (No.2) Act 1992 (c. 48)*

58 F(No.2)A 1992 is amended as follows.

59 Omit section 66 (which introduces Schedule 12).

60 Omit Schedule 12 (banks etc in compulsory liquidation).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

61 ITTOIA 2005 is amended as follows.

62 In section 369 (charge to tax on interest) after subsection (4) insert –

- “(5) See also Chapter 3A of Part 14 of ITA 2007 (which provides for the receipts of certain types of company being wound up to be charged to income tax under that Chapter instead of under any other provision that would otherwise apply).”

*Income Tax Act 2007 (c. 3)*

- 63 ITA 2007 is amended as follows.
- 64 In section 2(14) (overview of Act: Part 14) after paragraph (c) insert “, and  
(d) imposition of the charge to income tax on the receipts of certain types of company being wound up (Chapter 3A).”
- 65 In section 3(2) (overview of charges to income tax) –  
(a) omit the “and” immediately before paragraph (e), and  
(b) after paragraph (e) insert “, and  
(f) Chapter 3A of Part 14 of this Act (banks etc in compulsory liquidation).”
- 66 After section 837 insert –

**“CHAPTER 3A**

**BANKS ETC IN COMPULSORY LIQUIDATION**

**837A Overview**

- (1) This Chapter provides for the receipts of certain types of company being wound up to be charged to income tax.
- (2) For provision charging the receipts of such companies to corporation tax, see Chapter 6 of Part 13 of CTA 2010.

**837B Application**

- (1) This Chapter applies if –
  - (a) a company is being or has been wound up by the court in the United Kingdom, and
  - (b) each of conditions A to C is met.
- (2) Condition A is that the company was, at any time within the period mentioned in subsection (5), lawfully carrying on a business of accepting deposits as –
  - (a) a person of the kind mentioned in paragraph (b) of the definition of “bank” in section 991(2) (persons with permission under Part 4 of FISMA 2000 to accept deposits), or
  - (b) a permitted EEA credit institution.
- (3) Condition B is that the company has permanently ceased to carry on the trade that included the business of accepting deposits (the “deposit-taking trade”).
- (4) Condition C is that the company is insolvent and –
  - (a) was so when the winding up proceedings started, or
  - (b) became so at any time in the period of 12 months following the day on which those proceedings started.
- (5) The period referred to in subsection (2) is the period of 12 months ending with the earlier of –
  - (a) the day on which the winding up proceedings started, and
  - (b) the day on which the company permanently ceased to carry on the deposit-taking trade.

- (6) In subsection (2)(b) a “permitted EEA credit institution” means an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (credit institutions authorised by home state regulator) which has permission to accept deposits under paragraph 15 of that Schedule.

### **837C Charge to income tax on winding up receipts**

- (1) Winding up receipts arising from the deposit-taking trade are chargeable to income tax.
- (2) Subsection (1) applies in relation to a winding up receipt only so far as its value was not brought into account in calculating the profits of the trade of any period before the permanent cessation of the trade.
- (3) A “winding up receipt” means (subject to subsection (4)) a sum received by the company or its liquidator after –
- (a) the start of the winding up proceedings, or
  - (b) if later, the permanent cessation of the deposit-taking trade.
- (4) The following are not winding up receipts –
- (a) a sum received on behalf of a person entitled to the sum to the exclusion of the company and its liquidator, and
  - (b) a sum realised by the transfer of an asset required to be valued under section 173 of ITTOIA 2005 (valuation of trading stock on cessation).

### **837D Transfer of rights to payment**

- (1) This section applies if –
- (a) the company or its liquidator transfers for value to another person the right to receive a sum arising from the deposit-taking trade, and
  - (b) the sum is one which, if received by the company or its liquidator, would be a winding up receipt.
- (2) If the transfer is at arm’s length, this Chapter has effect as if the amount or value of the consideration for the transfer were a winding up receipt arising from the deposit-taking trade.
- (3) If the transfer is not at arm’s length, this Chapter has effect as if the value of the right transferred as between parties at arm’s length were a winding up receipt arising from the deposit-taking trade.

### **837E Allowable deductions**

- (1) In calculating the amount on which income tax is charged under this Chapter for a tax year, deductions are allowed in accordance with this section from the amount which would otherwise be chargeable to income tax under this Chapter.
- (2) A deduction is allowed for the total sum of all losses, expenses and debits within subsection (3) that are incurred during or before the tax year (but subject to subsections (4) and (5)).
- (3) The losses, expenses and debits within this subsection are those which, if the company carrying on the deposit-taking trade had not permanently ceased to do so –















































































































































